

131.608 Annual and quarterly certifications to Attorney General by participating and nonparticipating manufacturers -- Contents -- Scope -- Records.

(1) Prior to selling cigarettes in Kentucky, directly or through a distributor, retailer, or similar intermediary or intermediaries, every tobacco product manufacturer shall certify as true under penalty of perjury that, as of the date of certification, the tobacco product manufacturer is a:

- (a) Participating manufacturer; or
- (b) Nonparticipating manufacturer;

in full compliance with the provisions of KRS 131.600 to 131.630, 138.130 to 138.205, 248.752, and 248.754 and any administrative regulations promulgated thereunder. The participating manufacturer and the nonparticipating manufacturer shall execute and deliver an annual certification to the Attorney General on a form prescribed by the Attorney General no later than April 30 of each year. The nonparticipating manufacturer shall also submit a quarterly certification at the time and on a form prescribed by the Attorney General.

(2) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty (30) calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(3) A nonparticipating manufacturer shall include in its certification:

- (a) A complete list of its brand families;
- (b) A separate list of its brand families and the number of units sold in Kentucky for each brand family during the preceding calendar year;
- (c) A separate list of all of its brand families that have been sold in Kentucky at any time during the current calendar year including:
 - 1. Indicating by an asterisk any brand family sold in Kentucky during the preceding calendar year that is no longer being sold in Kentucky as of the date of the certification; and
 - 2. Identifying by name and address any other manufacturer of such brand families in the preceding or current calendar year;
- (d) A full disclosure of any removals or notices of removal from other state directories, which may be used as a basis to deny certification;
- (e) A listing of and a declaration from each of its importers of any of its brand families. The declaration shall state the following:
 - 1. The importer accepts joint and several liability with the nonparticipating manufacturer for all obligations to place funds into a qualified escrow fund, for payment of all civil penalties, and for payment of all reasonable costs and expenses of investigation and prosecution, including attorneys' fees, as provided in KRS 131.602;
 - 2. The importer consents to personal jurisdiction in this state for the purpose of claims by the state for any obligation to place funds into a qualified escrow fund, for payment of all civil penalties, and for

- payment of any reasonable costs and expenses of investigation or prosecution, including attorneys' fees, as provided in KRS 131.602;
3. The importer has appointed a registered agent for service of process in this state according to the same requirements established for the nonparticipating manufacturer as provided in KRS 131.614;
 4. The importer holds a valid permit under 26 U.S.C. sec. 5713;
 5. The importer is in compliance with the federal Jenkins Act, 15 U.S.C. secs. 375 et seq., as amended by the Prevent All Cigarette Trafficking (Pact) Act, Pub. L. No. 111-154, 124 Stat. 108; and
 6. The importer has complied with KRS 138.130 to 138.205, 248.752, and 248.754 and any administrative regulations promulgated thereunder; and
- (f) Verification that the nonparticipating manufacturer has provided the following:
1. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required under KRS 131.602 and all administrative regulations promulgated thereunder;
 2. The account number of the qualified escrow fund and any subaccount number for the state of Kentucky;
 3. The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in Kentucky during the preceding calendar year, the date and amount of each deposit and evidence or verification, as may be deemed necessary, by the Attorney General to confirm the foregoing;
 4. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund, or from any other qualified escrow fund into which it ever made escrow payments pursuant to KRS 131.602 and all administrative regulations promulgated thereunder.
- (4) A nonparticipating manufacturer requesting certification shall further certify that it:
- (a) Is registered to do business in Kentucky or has appointed a resident agent for service of process and provided notice as required by KRS 131.614;
 - (b) Holds a valid permit under 26 U.S.C. sec. 5713;
 - (c) Has established and continues to maintain a qualified escrow fund pursuant to KRS 131.602 and has executed a qualified escrow agreement that governs the qualified escrow fund and that has been reviewed and approved by the Attorney General;
 - (d) Is in full compliance with KRS 131.600 to 131.630 and 138.130 to 138.205 and any administrative regulations promulgated thereunder;
 - (e) Is in compliance with the federal Jenkins Act, 15 U.S.C. secs. 375 et seq., as amended by the Prevent All Cigarette Trafficking (Pact) Act, Pub. L. No. 111-154, 124 Stat. 108; and
 - (f) Whether acting as an individual, entity, or any other group or combination

acting as a unit, or any partner, director, principal officer, or manager of the entity or any other group or combination acting as a unit, has not been convicted of or entered a plea of guilty or nolo contendere to:

1. A crime relating to the reporting, distribution, sale, or taxation of cigarettes or tobacco products; or
2. A crime involving fraud, falsification of records, improper business transactions, or reporting;

for ten (10) years from the expiration of probation or final discharge from parole or maximum expiration of sentence.

- (5) A tobacco product manufacturer may not include a brand family in its certification unless:
 - (a) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and
 - (b) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes pursuant to KRS 131.602.
- (6) The nonparticipating manufacturer shall update all lists thirty (30) calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.
- (7) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of KRS 131.602.
- (8) The tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for a certification for a period of five (5) years.

Effective: July 1, 2015

History: Amended 2015 Ky. Acts ch. 55, sec. 3, effective July 1, 2015. -- Created 2003 Ky. Acts ch. 194, sec. 3, effective April 6, 2003.